

N.D.A.G. Letter to Slorby (Jan. 25, 1985)

January 25, 1985

Mr. Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, North Dakota 58701

Dear Mr. Slorby:

Thank you for your letter of December 31, 1984, regarding the application of North Dakota Veteran's Preference Law, N.D.C.C. Ch. 37-19.1, to a county, such as Ward County, which has no civil service system or testing mechanism for the employment of county workers.

The applicable provision of law states as follows:

37-19.1-02. PUBLIC EMPLOYMENT PREFERENCE TO
VETERANS--RESIDENCY REQUIREMENTS

1. Veterans who are North Dakota residents shall be entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference shall not be disqualified from holding any position with an agency because of physical or mental disability, unless such disability renders them unable to properly perform the duties of the position applied for. (emphasis supplied.)
2. When a veteran shall apply for appointment or employment under subsection 1, the officer, board, or person whose duty it is to appoint or employ a person to fill the available position shall, except where the veteran has been qualified for the position applied for under a personnel system, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall appoint or employ the veteran . . . (emphasis supplied.)

It is clear from reading N.D.C.C. § 37-19.1-02, which applies to a political subdivision such as Ward County which has no civil service system or testing mechanism for the employment of county employees, that an individual entitled to veteran's preference under the statute is entitled to preference "over all other applicants." The meaning of this statute

is unambiguous and has uniformly been interpreted to require the employment of an applicant who is entitled to veteran's preference before all other applicants who are nonveterans. While this may or may not result in "an acceptance of mediocrity" as you state in your letter, the letter of a statute cannot be disregarded under the pretext of pursuing its spirit when the statute is clear and free of ambiguity. N.D.C.C. § 1-02-05. In addition, the legislative history accompanying N.D.C.C. § 37-09.1-02 states:

"Section 2 [N.D.C.C. § 37-19.1-023, Line 24, on Page 2 of the bill, sets forth specific instruction on the application of veterans preference in positions filled that are not covered by a personnel system that is civil service, merit system, or any other organized system based on merit principle. An example of that may be a position in a small town of Rhame, North Dakota, where there is no formal personnel system, and you will notice in Line 30, if the veteran is found to be physically and mentally able to perform the duties of the position applied for, the officer, board or person shall appoint or employ him." Minutes of the Standing Committee on Social Welfare and Veterans Affairs in the Senate, and of the Committee on Veterans Affairs in the House, as recorded during the 1973 Legislative Session with reference to Senate Bill No. 2113 (now Chapter 37-19.1 of the Century Code).

It is clear that the Veteran's Preference Statute contained in N.D.C.C. § 37-19.1, and as applied to a non-civil service system, requires that a veteran who is found to possess the qualifications and is physically and mentally able to perform the duties of the position applied for in accordance with N.D.C.C. §37-19.1-02(2), must be hired over all other non-veteran applicants for the same position.

Sincerely,

Nicholas J. Spaeth

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